

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

B.P.J., by her next friend and mother,
HEATHER JACKSON,

Plaintiff,

vs. Civil Action No. 2:21-cv-00316
Hon. Joseph R. Goodwin

WEST VIRGINIA STATE BOARD OF
EDUCATION; HARRISON COUNTY BOARD
OF EDUCATION; WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION; W. CLAYTON BURCH in his
official capacity as State Superintendent;
DORA STUTLER in her official capacity as
Harrison County Superintendent;
PATRICK MORRISEY in his official
capacity as Attorney General; and THE
STATE OF WEST VIRGINIA,

Defendants.

**MOTION TO DISMISS DEFENDANT, PATRICK MORRISEY, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF THE STATE OF WEST VIRGINIA**

Defendant, State of West Virginia and Patrick Morrisey, in his official capacity as Attorney General of the State of West Virginia, by and through counsel, move that the Attorney General be dismissed from this action. In support of this motion,

- (1) The Attorney General is an inappropriate party under the principles and analysis enunciated in *Ex Parte Young*, 209 U.S. 123, 157 (1908), and related caselaw.
- (2) The Attorney General is not tasked with enforcing Section 18-2-25d of the West Virginia Code, which is the statute created by House Bill 3293 (the “Act”) at issue in this matter, or Chapter 18 of the West Virginia Code generally.

(3) Section 5-3-2 does not charge the Attorney General with a general duty to enforce all state laws in West Virginia, and even if it did, such a general duty is insufficient to render any such officer an appropriate defendant.

(4) The inclusion of Attorney General as a defendant in this matter does not—and any extension of the already-ordered preliminary injunction or future permanent injunction against the Attorney General in this matter would not—grant the relief sought by the First Amended Complaint.

Therefore, for the foregoing reasons and as more fully explained in the supporting memorandum of law filed contemporaneously herewith, Defendants ask the Court to grant this Motion and dismiss the Attorney General as a defendant in this action.

Respectfully submitted,
STATE OF WEST VIRGINIA, and
PATRICK MORRISEY, in his official capacity as
Attorney General for the State of West Virginia,

By counsel,
PATRICK MORRISEY,
ATTORNEY GENERAL

/s/ Curtis R. A. Capehart
Douglas P. Buffington, II (WV Bar # 8157)
Chief Deputy Attorney General
Curtis R. A. Capehart (WV Bar # 9876)
Deputy Attorney General
David C. Tryon (visiting attorney)
Special Assistant to the Attorney General
Jessica A. Lee (WV Bar # 13751)
Assistant Solicitor General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Email: Curtis.R.A.Capehart@wvago.gov
Telephone: (304) 558-2021
Facsimile: (304) 558-0140

*Counsel for Defendants STATE OF WEST VIRGINIA,
and PATRICK MORRISEY, in his official capacity as
Attorney General for the State of West Virginia*